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In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

UNIVERSAL BUILDERS, et al.,

Petitioners,

vs.

SIDNEY AND JULIA CLARK, et al.,

Respondents.

ACTION REALTY, et al.,

Petitioners,

vs.

CHARLES BAKER, et al.,

Respondents.

BRIEF IN OPPOSITION

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In the
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OCTOBER TERM, 1969

NOS. 1637, 1643

UNIVERSAL BUILDERS, et al.,

Petitioners,

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Respondents.

BRIEF IN OPPOSITION

Respondents pray that the petitions for writs of certiorari filed in cases Nos. 1637 and 1643 be denied.

Since petitioners in case No. 1643 adopted as their argument the petition filed in case No. 1637, this single brief is filed in opposition to petitions filed in both cases. These cases were consolidated for argument in the Court of Appeals for the Seventh Circuit, and a single opinion was rendered by that Court.

QUESTIONS PRESENTED

1. Whether the courts below correctly decided that the Illinois statute of limitation on causes of action under 42 U.S.C. §1982 based upon racial discrimination in the price and terms of real estate instalment contracts, and upon subsequent discriminatory practices, which imposed a continuing inferior status on respondents and which inflicted continuing harm upon them, does not begin to run until the expiration of the contracts.

2. Whether the courts below correctly held in No. 1645 that the Illinois statute of limitation does not begin to run against respondents during the lifetime of the alleged conspiracy among petitioners to violate respondents' rights under 42 U.S.C. §1982.

REASONS FOR DENYING THE WRIT

1. There is no conflict among the circuits, and no holding concerning the commencement of statutes of limitation at variance with any decision of this Court.

2. Petitioners raise no claim of substantial injustice that might be suffered by them. Only if the ruling of the courts below was overturned would any injustice be suffered, and then only by respondents.

I.

THE DECISIONS OF THE COURTS BELOW REGARDING COMMENCEMENT OF THE STATUTE OF LIMITATION DO NOT CONFLICT WITH ANY RULING OF THIS COURT OR OF ANY OTHER CIRCUIT.*

These cases challenge discriminatory practices which directly impaired the rights of respondent Negroes to acquire and hold residential realty in Chicago, Illinois. Respondents have alleged that petitioners took unlawful advantage of Chicago's racially segregated housing market and discriminatory lending practices, and thereby perpetrated continuing wrongs upon respondents through the use of unconscionable contracts and the exaction of discriminatory prices and terms. In No. 1643, respondents have alleged the existence of a conspiracy among petitioners to fix prices and to violate respondents' rights under 42 U.S.C. §1982 and the federal anti-trust laws.

* Whether state statutes of limitation should be applied to bar respondents' claims under 42 U.S.C. §1982 is a separate question which is raised by respondents in their Petition for Certiorari, filed June 4, 1970. (No. 1653.)

Under applicable federal law, the statute of limitation does not commence to run until the termination of the contracts. This issue was correctly decided by both courts below.

Petitioners are wrong in contending that the ruling below conflicts with previous decisions of this Court and of other circuits. The reasoning of the courts below is in accord with the rationale and holding in *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968). Hanover, a shoe manufacturer, brought an anti-trust action against United Shoe Machinery Co., a producer of machinery, for refusing to sell machinery and for leasing its machinery at high rates and under harsh and illegal terms. United contended that Hanover's cause of action arose in the year the leases were first executed, and was therefore barred by the applicable statute of limitation. This Court rejected United's contention, holding that United's continuing violation of Hanover's rights gave rise to a corresponding continuing period within which Hanover could institute suit (392 U.S. at 502, n. 15):

> "... We are not dealing with a violation of law which, if it occurs at all, must occur within some specific and limited time span. ... Rather, we are dealing with conduct which constituted a continuing violation of the Sherman Act and which inflicted continuing and accumulating harm on Hanover. Although Hanover could have sued in 1912 for the injury then being inflicted, it was equally entitled to sue in 1955."

As *Hanover*, the cases at bar involve continuing exploitation in addition to unlawful original contracts. Here, as in *Hanover*, that exploitation was itself a legal wrong, and not merely the effects of a prior wrong.

The rule in *Hanover* was correctly applied in these cases. Respondents' cause of action here is based on continuing wrongs, exemplified by the exaction of excessive monthly payments and the enforcement of discriminatory contract terms, which went on (and still go on in most cases) long after the date of execution of the instalment contracts. Thus, the Court of Appeals observed that "Here the defendants [petitioners] have entered into a series of contracts which manifest an on-going relationship between the individual participants and constituting the alleged invasion of the rights of the plaintiffs [respondents]." (420 F.2d at 1200.)*

The "badge of slavery" imposed by petitioners on respondents continues so long as the contracts are in existence. A person held in servitude has a cause of action so long as he is held; the contracts here are the legal equivalent of contracts for unlawful servitude, and causes of action attacking those contracts cannot be extinguished by passage of time so long as the contracts continue.

* The District Court elaborated on the continuing nature of respondents' injuries, stating: "[The] immediacy of the alleged injury goes beyond the continuing collection of allegedly unlawful profit and enforcement of the contracts . . . Only the most parochial view of the Civil Rights Act would identify its ultimate intention to be simply the restoration of any monetary loss suffered on account of race. The abolition of slavery was to be a redemption of human dignity. The indignity alleged to have been suffered in this case cannot be confined to the dates of execution of the various contracts, but can be understood only in relation to the continuing activity whereby the alleged indignity continues to be inflicted and exploited . . . ." (300 F. Supp. at 221.)

In No. 1634, there is an additional reason for holding that the statute of limitation does not begin to run until the contracts have ended. In that case, respondents allege the existence of a conspiracy among petitioners to violate respondents' civil rights. The limitation period does not commence to run in conspiracy cases until the performance of the last overt act alleged to have caused damage. *Steiner* v. *20th Century Fox Film Corp.*, 232 F.2d 190, 194 (9th Cir. 1956).

The cases cited by petitioners are not in point because they did not involve a conspiracy or continuing violation of plaintiff's rights (*Berry* v. *Chrysler Corp.*, 150 F. 2d 1002 (6th Cir. 1945)); or because no injury or damage occurred within the applicable limitations period (*Fleischer* v. *A.A.P., Inc.*, 180 F. Supp. 717 (S.D.N.Y., 1959)); or because the defendant did not participate in the maintenance of a continuing violation (*Skouras Theatres Corp.* v. *Radio-Kieth Orpheum Corp.*, 193 F. Supp. 401 (S.D. N.Y., 1961)). State court cases and federal diversity cases are irrelevant; *Hanover* settles the rule to be followed in cases arising under federal statutes. Petitioners' discussion of the time at which a cause of action accrues is inappropriate. The question here is the effect of rules tolling the time at which the statute commences to run.

Petitioners have attempted to create an aura of conflict by citing broad maxims which have no applicability to the specific facts in this case. But petitioners cannot manufacture conflicts where none exist. The decision as to the running of the limitations period is in complete harmony with applicable rulings of this Court.

II.

SUBSTANTIAL INJUSTICE TO RESPONDENTS WOULD RESULT IF THE STATUTE OF LIMITATION WERE HELD TO BAR RESPONDENTS' CAUSES OF ACTION.

Petitioners have entered into long term contracts with respondents. The continuing nature of these contracts, combined with petitioners' obligation to convey title to property at a time in the future, obviously creates a risk of litigation between the contracting parties long after the contracts were signed.

The ruling of the courts below is consistent with prior rulings regarding the running of statutes of limitation. No injustice will result from applying the well established principles governing the tolling of limitation periods as to defendants who commit continuing wrongs and who engage in illegal conspiracies. The new rules which petitioners seek to have this Court apply would fly in the teeth of this Court's holdings that technical interpretation of statutes of limitation should not frustrate or bar meritorious causes of action.

In *Crown Coat Front Co. v. United States*, 386 U.S. 503, 517 (1967), this Court said that limitations statutes should be interpreted ". . . in light of the general purposes of the substantive statute . . . and with due regard to those practical ends which are to be served by any limitation of time within which an action must be brought."

The end sought by petitioners is to leave many of the respondents without a remedy, contrary to the broad relief contemplated by the Civil Rights Act of 1866, including 42 U.S.C. §1988.

Not until 1968, when this Court decided *Jones* v. *Mayer*, 392 U.S. 409 (1968), did a judicial remedy appear to be available to respondents. These actions were filed in January, 1969. To restrict the availability of a remedy at this time would result in grave injustices against Negro citizens who cannot fairly be said to have slept on their rights or ignored available judicial remedies.

Petitioners' reliance upon *Toussie* v. *United States*, 397 U.S. 112 (1970), is misplaced. *Toussie* held that the statute of limitation for the crime of failing to register for the draft ran from the initial refusal to register. This holding was expressly based on a finding that the offense was *not of a continuing nature*. (397 U.S. at 120-121.) The decision is consistent with the rule in criminal cases of continuing statutes strictly, and in favor of the accused.

Petitioners also argue that the decisions below will inhibit selling to Negroes on credit. But surely, providing a remedy commensurate with the period of injury will have no effect on lawful transactions, but rather will assure Negro citizens that they have a legal means to seek redress against discriminatory contracts so long as the contracts, and perforce the discrimination, continue. The rulings below correctly recognize the right to sue so long as the plaintiff is suffering from the effects of racial discrimination.

The District Court characterized petitioners' arguments as being "lost in the metaphysic of 'essential' act of injury." (300 F.Supp. at 220-221.) This litigation is an attempt to provide a remedy for a great many Negro purchasers of real estate from the racial discrimination and exploitation practiced by petitioners. Respondents live with the impact of petitioners' activities every day of their lives.

For all the foregoing reasons, respondents urge that the petitions filed in Nos. 1637 and 1643 be denied.

Respectfully submitted,

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